

October 14, 2015

Mr. Jaimeson Sinclair
Assistant Director, Engineering & Enforcement Division
Bureau of Air Management
Department of Energy & Environmental Protection
79 Elm Street
Hartford CT 06106

Re: Limited interim extension of current General Permit to Limit Potential to Emit (GPLPE)

Dear Mr. Sinclair:

This is to follow up CBIA's previous discussions with DEEP regarding temporarily extending the current GPLPE and, in particular, to set out our legal analysis to date in support of DEEP authority to do so.

A limited interim extension – CBIA proposes a minimum of six months – is needed to provide critical time for CTDEEP and stakeholders to resolve the many difficult issues that have arisen under the EPA induced proposal to make significant changes to this important and to date, remarkably successful program. The GPLPE has been a relatively clear, streamlined and effective way to avoid unnecessary Title V permitting burdens for hundreds of Connecticut businesses (to say nothing of DEEP air permitting staff), with no environmental impacts.

A limited interim extension of the GPLPE is consistent with DEEP's authority as follows:

1. Section 22a-174 sets out the Commissioner of Environmental Protection's authority with respect to air quality. Section 22a-174(k) authorizes the Commissioner to issue general permits for air emissions. Section 22a-174(k)(3) provides that such general permits "shall be issued for a fixed term," and that "a general permit covering an activity regulated under the federal Clean Air Act shall be issued for a term of no more than five years" (id., emphases supplied).

This language specifically addresses the terms under which a general permit is issued. The current GPLPE was properly issued for a five-year term in full compliance with these provisions. Clearly there was no expectation of an extension at that time, or other grounds to claim that the Commissioner issued the GPLPE for a five-year term in bad faith. An unexpected limited extension of the GPLPE in order to deal with the present crisis would not change that the permits were properly issued for five-year terms. To claim otherwise would essentially claim that the Commissioner is powerless to deal with emergency situations caused by forces by his or her control and that threaten severe short-term and long-term disruption to a key air program.

CBIA notes that earlier this year, the Commissioner extended several wastewater general permits beyond their stated 5-year terms:

- General Permit for hydrostatic pressure testing wastewater: five-year term ended March 30, 2015, extended a year to March 29, 2016
- General Permit for discharge of Groundwater Remediation Wastewater Directly to Surface Water: Same
- General Permit for Non-contact Cooling and Heat Pump Water: Same
- General Permit for Water Treatment Wastewaters: Same
- General Permit for Stormwater from Small Municipal Separate Storm Sewer Systems (MS4): Extended to January 8, 2016

See

http://www.ct.gov/deep/cwp/view.asp?a=2709&q=324212&deepNav_GID=1643#WaterTreatmentGP. As with the Commissioner's statutory authorization for air general

permits, the Commissioner's statutory authorization for wastewater general permits specifies that they shall be "issued" for a 5-year term. See CGS 22a-430b(a) (a wastewater general permit "shall be issued ... in accordance with the standards and procedures specified for an individual permit, in accordance with ... [CGS] 22a-430") and CGS 22a-430(c) ("The [individual] permits issued pursuant to this section shall be issued for a period not to exceed five years."). Nothing in this language prevents the general permits from being extended if necessary, and the Commissioner has done so.

2. The statutes setting out the Commissioner's air program authority also grants the Commissioner "all incidental powers necessary to carry out the purposes of ... [the statutes regarding air quality]." CGS 22a-174(d). These purposes undoubtedly include (a) preventing serious short-term and long-term disruption of a key CTDEEP air program due to purely administrative reasons beyond CTDEEP's control (and likely disruption of other key programs such as Section 3a permitting of new or modified facilities that expand Connecticut's economy and job base); and (b) preventing significant needless costs to Connecticut businesses. Denying a limitation extension of the GPLPE would defeat these purposes. Granting a limited extension would accomplish them -- and without any harm whatsoever to human health or the environment. The Commissioner rarely faces choices with such a clearly superior option. A limited extension under these circumstances fits squarely within the grant of incidental powers in CGS 22a-174(d).

CBIA and its members recognize that the current timing crunch is because of late and unexpected intervention by EPA, out of the control of the Department. These extraordinary circumstances further support the Department using its extraordinary powers to temporarily extend the current GPLPE.

As you know, unless extended, the current GPLPE will expire November 19, 2015. Time is extremely tight. We have heard from numerous GPLPE registrants who are very concerned about various provisions of the recently proposed version of the GPLPE, and about the prospect of the Department proceeding with the proposal with no interim extension of the current GPLPE:

- At a minimum, all GPLPE permittees would face serious internal disruption in scrambling to prepare complex, data-intensive applications on forms only just released today.

- Even more troubling, a significant subset of GPLPE permittees are now in the impossible position of attempting to assess and make strategic decisions under deadline about a program that has not yet been finalized.
- Most troubling of all, sources that have been relying on the GPLPE to maintain their status as minor sources of HAPs or VOCs are now facing serious risk, or worse, of a gap in coverage. Under EPA's "once in, always in" policy, any such gap, no matter how temporary or out of the source's control, apparently would cause such sources to be pulled into complex "major source" HAP and VOC programs in perpetuity.

To the extent CTDEEP is concerned that even a limited extension of the current GPLPE would itself require a public notice period that may delay issuance of the extension past November 19, 2015, several options are available, such as:

- Proceed under a hybrid approach: proceed with such a public notice as soon as possible, and be ready to use the Commissioner's "incidental powers" under CGS 22a-174(d) to provide an interim extension
- Make the extension retroactive to avoid a coverage gap
- At a minimum, issue interim Consent Orders to temporarily cap the emissions of all sources at risk of losing HAP or VOC minor source status in a coverage gap.

As DEEP has repeatedly emphasized in recent years, environmental protection, done right, can and should be consistent with a good business climate and economic growth. CBIA urges DEEP not to subordinate Connecticut businesses, economic development and jobs to addressing administrative demands by EPA lawyers twenty years after the fact. A limited extension to allow the time needed to resolve the issues presented by the recent proposed changes to GPLPE is consistent with DEEP authority, and clearly the most efficient, effective and appropriate way to defuse and resolve this situation.

Due to very limited time here, I would like to meet with you and other appropriate management at the Department about these issues as soon as possible. I will follow up with you shortly about this.

Thank you for your attention to this matter.

Very truly yours,



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CBIA Energy & Environment Council

cc: Gary Rose
Anne Gobin
Michael Sullivan, Esq.